22 PAGES PART II.

THE ST. LOUIS REPUBLIC.

1,812 "PLACES OF BUSINESS" were advertised in the "Business For Sale" columns of The Republic last month. 498 more than any other St. Louis newspaper printed during the same month.

NINETY-FIFTH YEAR. ST. LOUIS, MO., WEDNESDAY, DECEMBER 17, 1902. PRICE { In St. Louis, One Cent. On Trains, Three Cents. Outside St. Louis, Two Cents.

SUPREME COURT CRITICISES TRIAL METHODS; GRANTS MEYSENBURG A NEW HEARING.

Judge Sherwood, in Rendering His Last Opinion From the Bench, Reviews Work of Circuit Attorney Folk—Majority of the Court Does Not Agree to Discharge Defendant, Who Will Again Be Arraigned in Connection With Suburban Bill Legislation—Indictment Is Held to Be Illegal.

PROSECUTING ATTORNEY DECLINES TO DISCUSS OPINION—AWAITING TRANSCRIPT OF RULING.

EMIL A. MEYSENBURG.
Councilman convicted of bribery in March and sentenced to serve three years, whose case has been reversed and remanded by the Supreme Court.

REPUBLIC SPECIAL.

Jefferson City, Mo., Dec. 16.—The Missouri Supreme Court today reversed and remanded for a new trial the case of Emil A. Meysenburg of St. Louis. The opinion was written by Judge Thomas A. Sherwood, and handed down in Division No. 2 of the Supreme Court at 2 o'clock.

All of the other Judges of the division concur with Judge Sherwood in the reversal, but differ as to disposition of the case. Judge Gantt filed a separate opinion on the case, while Judge Burgess attached a brief memorandum to the Sherwood opinion agreeing except as to instructions numbers 8 and 11 by trial court.

Judge Sherwood stated in his opinion that there is absolutely no ground for a conviction and orders the defendant discharged. The majority of the court does not agree to the discharge of the defendant, so he will be tried again for the alleged charge of bribery.

Judge Sherwood scores Judge Douglass and Circuit Attorney Folk for the manner in which the case was conducted and blames them for errors in the record.

The reversal was obtained chiefly on account of a faulty indictment. Judge Sherwood attacks the indictment in the first part of his opinion, in which he says:

"A man is innocent until his guilt is established. It is inferred that what is not charged in the indictment does not exist. Facts must be stated in an indictment with clearness and certainty. Taking the allegations of the indictment, if true, there was nothing that the defendant has done or could do in consideration of a bribe received, and there is no averment in the indictment that the defendant had done any act in the past or promised to do any act in the future in consideration of what he had received.

SAYS IT WOULD BE A FARCE TO AUTHORIZE A CONVICTION.

"How, then, do the defendant's alleged acts amount to bribery, either at common law or to accepting a bribe under our statutes. Plainly, they do not. And it may be further remarked in this connection that the statement in the indictment that the $9,000 was the pretended and ostensible price, consideration and value of certain worthless and unmarketable shares of stock,' etc., was a mere matter of evidence, and had no business or place among the allegations of an indictment."

Judge Sherwood holds that it was not necessary on the part of the defendant to file a motion to quash the indictment in the trial court, as it is equally as available in the head court to do so, or even the appeal court may raise the question of a faulty indictment and reverse the case.

In another place, speaking about the character of the evidence taken in the case, Judge Sherwood says: "It would be simply a farce to hold that such evidence would authorize a conviction."

Judge Gantt agrees with Judge Sherwood takes occasion to say some cutting things about Judge Douglass and Attorney Folk. He remarks in his thirty years' experience on the Supreme bench of Missouri that the Meysenburg record contained more errors than any he had ever met before.

This was the last opinion written by Judge Sherwood before retiring from the Supreme bench after a service of thirty years. The court will not meet again until next year, when Judge Fox will have become a member of the court, and Judge Sherwood will have retired.

The final paragraphs of Judge Sherwood's opinion are as follows:

"It was wholly unprecedented and at war with familiar principles for the court to permit the Circuit Attorney to ask the panel of prospective juries if they were acquainted with certain noted bribe-givers and takers, naming them, all of whom were then under indictment in the same court.

SEGREGATION IS CONDEMNED AS REPREHENSIBLE CONDUCT.

"This was evidently done, and was an order by an indirection to do what could not have been done directly. To intimate to the juries that the defendant was a bird of the same feather and thus in advance prejudice the panel against them. The trial court of its own motion should have surely rebuked this reprehensible conduct.

"The trial court should not by its order have segregated defendant from his counsel and set him apart from them, thereby making it inconvenient for them to consult with him as occasion should require. Such an order is without precedent. But in as much as no objection was made or exception saved to this order at the time when made, no advantage can be taken here of its being erroneous.

"This record abounds at every turn with errors committed, but none of them, however, in favor of the defendant. It would fill a volume properly to note and comment upon them; it will not be attempted. Those already mentioned must be taken as indices of the rest.

"But, I will say this for the record at bar that it occupies the bad pre-eminence of holding a larger number of errors than any other record in a criminal case I have ever before examined; and that if this record exhibits a sample of a fair trial, then let justice hereafter be symbolized by something other than the blind goddess with sword and scales.

"Because of the fact that there is no evidence to support the verdict of guilty the judgment should be reversed and defendant discharged."

Judge Gantt agreet with Judge Sherwood in holding that the indictment is bad, but believes that the evidence is sufficient to justify another trial of the case. The case will therefore go back to St. Louis for retrial.

After reviewing the charge of bribery against the defendant as set forth in the indictment, which is presented in full, the opinion by Judge Sherwood first takes up the statute on which the indictment is founded, which is in two sections, the latter of which applies to this particular indictment.

POINTED EXTRACTS FROM JUDGE SHERWOOD'S OPINION.

"It was wholly unprecedented and at war with familiar principles for the Court to permit the Circuit Attorney to ask the panel of prospective jurors if they were acquainted with certain noted bribe givers and takers, naming them, all of whom were then under indictment in the same court. This was evidently done in order by an indirection to do what could not have been directly done: to intimate to the jurors that defendant was a bird of the same feather, and thus in advance prejudice the panel against him. The trial court, of its own motion, should have severely rebuked this reprehensible conduct.

"The trial court should not, by its order, have segregated defendant from his counsel and set him apart from them, thereby making it inconvenient for them to consult with him as occasion should require. Such an order is without precedent. But inasmuch as no objection was made or exception saved to this order at the time when made, no advantage can be taken here of its being erroneous.

"This record abounds at every turn with errors committed; but none of them, however, in favor of defendant. It would fill a volume properly to note and comment upon them; it will not be attempted. Those already mentioned must be taken as indices of the rest.

"But I will say this for the record at bar, that it occupies the bad pre-eminence of holding a larger number of errors than any other record in a criminal case I ever before examined, and that if this record exhibits a sample of a fair trial, then let Justice hereafter be symbolized by something other than the blind goddess with sword and scales.

"T. A. SHERWOOD, J."

Attention is drawn particularly to two principal parts of the indictment, designated "a" and "b." The first part of the indictment, which charges Meysenburg with having accepted a gift in consideration of his vote for the bill, the court holds, is in conflict with the latter part, which charges that until $9,000 was paid him he would oppose and defeat the bill. As it was the latter paragraph, however, on which the defendant was tried, it is the only one, the court holds, whose sufficiency need be examined.

The court then goes into an exhaustive examination of the statute defining bribery, quoting numerous authorities, to determine the sufficiency of the indictment.

In the case before us the statute of prosecution speaks of what would be criminal acts on the part of a number of official persons, to-wit: A Judge or Justice of any court, Justice of the Peace, member of the Legislature or officer or employe thereof, and any other public officer of this State, or of any county or city, town or township thereof, who shall receive a bribe, etc.

It would seem that so far as concerns a member of a legislative body, that the corrupt agreement must be

1. That the vote will be given for some particular person, or

2. That the vote will be given in some particular manner, or

3. That the vote will be given upon some particular side, or

4. That the action will be more favorable to one side than to the other, or

5. That the legislator will neglect or omit to perform some official duty, or

6. That he will perform the same with partiality or favor or otherwise than according to law.

But the indictment here does not proceed in this manner; it does not follow the statute, either in a general or in a specific way, and if the words "oppose, resist, withstand, thwart and defeat" can be regarded as the proper words to use, still unless the indictment had specified how or in what way and manner, defendant agreed he would oppose, resist, etc., the use of those words would be the mere statement of a legal conclusion and, therefore, wholly insufficient and inadequate, as stated in the foregoing authorities. * * *

BLACKMAILING CONSIDERED INSTEAD OF A BRIBE.

In concluding this paragraph of the opinion it may not be amiss to say that the clause of the indictment just considered would seem more closely to resemble a black-mailing scheme than the acceptance of a bribe.

And it appears passing strange that the "legislative agent," the promoter of the proposed ordinance, should make an express agreement with defendant that the latter should "oppose, resist, etc.," the pending ordinance until and unless the sum of money should be paid him, and then immediately paid it. In other words, the promoter of the enterprise expressly agreed with defendant that the latter should oppose such enterprise, and then immediately paid him $9,000 to instantly refrain from such opposition, thus contemporaneously bargained for.

In short, the promoter expressly agreed with defendant for his opposition to the ordinance, and then immediately paid him before such opposition could possibly begin. Such transaction closely resembles a child's play of cross purposes.

Taking the allegations of the indictment as true, there was nothing that defendant had done or could do in consideration of the bribe received. And there is no averment in the indictment that defendant had done any act in the past or promised to do any act in the future, in consideration of what he had received. State vs. Saunders, 63 Mo. 482; State vs. Phelan, 159 Mo. 122. How, then, do defendant's alleged acts amount to bribery either at common law or to accepting a bribe under our statute? Plainly they do not.

And it may be further marked in this connection that the statement in the indictment that the $9,000 was "the pretended and ostensible price, consideration and value of certain worthless and unmarketable shares of stock," etc., was a mere matter of evidence, and had no business or place among the allegations of an indictment.

2. Nor was it at all necessary, as has been urged by the prosecution, for defendant to raise the point of the insufficiency of the indictment either by motion to quash, demurrer or motion in arrest, since such insufficiency being matter of record, can be raised by mere writ of error. This was the rule at common law. Rex vs. Osmer, 5 East. 304; Rex vs. Everett, 8 B. & C. 114; Rex. vs. Norton, 8 C. & P. 196; Rex vs. Jackson, 1 Leach, 360. See also State vs. Hagan, 154 Mo. loc. cit. 453.

And in this State it has been the rule ever since the case of McGee vs. State, 8 Mo. 495, that wherever a defect in an indictment is available on motion in arrest, it is equally available in this court on appeal or error, and that this court of its own motion will raise the point. State vs. Meyers, 99 Mo. loc. cit. 113 and many sub. Cas. And in determining the sufficiency of an indictment based on a criminal statute, the rule of law is axiomatic that the language of such statute must be strictly construed in favor of the defendant. U. S. vs. Rapp, 30 Fed. Rep. 818, and no person can be brought within the penalties of such statute unless the indictment, by proper averments, makes out a prima facies case, by bringing him within both the letter and spirit or meaning of such statute. Bishop Stat. Crim. (2nd Ed.) sec. 230; Ib. sec. 227.

3. But even if the indictment could be held sufficient, still the judgment could not be affirmed for the reason that a fatal variance exists between the allegation in the indictment that "the sum of nine thousand dollars lawful money of the United States" was paid defendant, while the testimony offered in support of such allegation clearly shows that such amount was not paid in money but in lieu thereof, a check was given for the amount. This constituted no evidence whatever to support the charge. Bishop Stat. Crim. secs. 328, 346.

Numerous precedents announce and illustrate this familiar rule and fundamental principle of evidence. Thus it has been held that under an allegation "of the lawful money of the United States," evidence that notes to the same amount issued by a National Bank was not sufficient to support the charge. Hamilton vs. State, 60 Ind. 192.

So where the averment was that the "defendant said he had paid a sum into the bank, but the proof was that he said the money had been paid, not stating by whom, the defendant was acquitted for the variance; Lord Ellenborough holding that "the assertions were different in substance." Rex vs. Piestow, 1 Camp. 494.

In the State vs. Dodson, 72 Mo., 382, where Dodson was indicted for the embezzlement of horses, this court held that any evidence to show that he had embezzled the proceeds of the sale of such horses, after selling them, was wholly inadmissible and any instruction based thereon incurably erroneous. Similar instances are found in the books in great numbers, and some of them are cited in the brief of counsel for defendant.

WIDE DESCREPENCIES IN INDICTMENT POINTED OUT.

4. But further on the subject of the wide discrepancy between allegata of the indictment and the probata offered in support of the charge. The indictment at bar alleges an "express understanding and agreement between the said Emil A. Meysenberg and the said Philip Stock." It was quite unnecessary to allege an express agreement between defendant and Stock, but being alleged it became descriptive of the offense and had to be proved as laid; this is the inflexible and universal rule as shown by all the authorities and as understood by all lawyers. * * *

In the present instance, "an express agreement" being alleged, testimony touching an implied or inferential one was out of the question, and wholly inadmissible.

STRICTNESS OF PROOF MUST BE ADHERED TO.

The same rule as to the strictness of proof in support of certain needlessly minute allegations prevails even in pleadings in civil actions. Thus Greenleaf: "No allegation, descriptive of the identity of that which is legally essential to the claim or charge, can ever be rejected." * * * * * In justifying the taking of cattle damage feasant, because it was upon the close of the defendant, the allegation of a general freehold title is sufficient; but if the party states that he was seized of the close in fee, and it be traversed, the precise estate, which he has set forth, becomes an essentially descriptive allegation, and must be proved as alleged. In this case the essential and nonessential parts of the statement are so connected as to be incapable of separation, and, therefore, both are alike material." * * * * * * * Nor is it material whether the action be founded in contract or tort; for in either case, if a contract be set forth, every allegation is descriptive. Thus in an action on the case for deceit in the sale of lambs by two defendants, jointly, proof of sale and warranty by one only, as his separate property, was held to be a fatal variance. So, also, if the contract described be absolute, but the contract proved be conditional, or in the alternative, it is fatal. The consideration is equally descriptive and material, and must be strictly proved as alleged." Gil. Evid. Secs. 56, 58.

And under this view it has frequently been determined in this State, in mere civil actions, that the allegation in a petition of an express contract or warranty cannot be established or supported by proof of an implied contract or warranty. Huston vs. Tyler, 140 Mo. 253, and cas. cit.; Newland Hotel Co. vs. Furniture Co., 73 App. 125; Call vs. Armour, 154 Mo. 1, c. 359.

If the observance of such strictness of proof be the undeviating rule in ordinary civil actions, then assuredly, also by the stronger reason, no less strictness can be permitted or tolerated in a criminal prosecution.

5. On the subject of proving the express agreement as laid, the trial Judge made a distinction between the concurrence of the wills or two persons, and the concurrence of their minds, and in the endeavor to give this distinction elucidation, made this deliverance: "It is not necessary to an agreement that the wills concur if the minds concur. If I meet a highwayman and he presents a pistol and says if I do not surrender my valuables he will kill. If you paid under that agreement, it is an agreement of the mind." Such a distinction as this which separates the mind from the lever which moves it, to wit, the will, has never before appeared in print. If the idea above set forth be correct, the doctrine of duress, as laid down in the books, should no longer be accepted as an accurate statement of the law, and a new dictionary and definition should be made, formulated and promulgated as to the meaning of aggregatio mentium.

And the singular views of the trial court as to what an "express agreement" means are further contained in this instruction to the jury, given over objection and exception of defendant: "Second: By the terms 'express understanding and agreement,' as used in the indictment and in these instructions is meant the concurrence of the minds of two persons upon the same proposition which has heretofore been set out by one or both of said parties in words or by conventional signs of a defined meaning.

"And an express understanding and agreement made between two persons through the instrumentality, in whole or in part, of a third person, amounts to the same thing."

But there was no evidence whatever as to any such words or conventional signs of a defined meaning or of any other kind. So that the instruction, aside from its conspicuous vagueness, had no foundation in evidence on which to rest, and besides assumed that some such conventional signs of a defined meaning had passed between the parties. The whole evidence on this point as to the interview between Stock and defendant is in these words: "I telephoned Mr. Meysenburg, on February 2, in the morning, that I would like to meet him between ten and eleven and the answer came back that he would be in. Mr. Kratz and I went over to Mr. Meysenburg's and Mr. Kratz said: 'Mr. Stock is here to settle for those shares.' I then stated that I understood our people had not treated him properly and I wanted to show we do by paying the amount asked, although the shares were of no value. He then turned to Mr. Kratz and said: 'Charlie, you know very well I do not want anything but what is fair and square. I merely want the money which I laid out.' He then handed me a statement and these shares, stating he had expended so much money. I did not look at the statement at all, and handed him over the check, and he in return gave me the balance between the statement and the check, which was about $33.42. I believe; he gave me that in currency. I think I was about leaving when Mr. Meysenburg said to me: 'Now, Mr. Stock, I want you to strictly understand that this is a strict business proposition and that it will not influence my vote respecting the Suburban bill.' Then I left with Mr. Kratz." The witness stated that this was all that occurred. He stated also, that he never had a conversation with Meysenburg before this with reference to paying him $9,999, or getting this stock. Kratz did not testify, nor was he called as a witness by the State. There is nothing in this testimony to show any act of criminality on the part of defendant. The establishment of inferences, however, strong, or probabilities, however great, will not warrant a conviction. The doctrine of chance does not apply here. Ogletree vs. State, 28 Ala. 693. Amer. Lead. Cas. 659; Com. vs. McKie, 1 Gray, 61. See also State vs. Shelley, 146 Mo. 618.

REASONABLE DOUBT EMPHASIZED IN CASES OF THIS CHARACTER.

Greenleaf says: "A distinction is to be noted between civil and criminal cases, in respect to the degree or quantity of evidence necessary to justify the jury in finding their verdict for the government. In civil cases, their duty is to weigh the evidence carefully, and to find for the party in whose favor the evidence preponderates, although it is not free from reasonable doubt. But, in criminal trials, the party accused is entitled to the benefit of the legal presumption in favor of innocence, which in doubtful cases is always sufficient to turn the scale in his favor. It is, therefore, a rule of criminal law that the guilt of the accused must be fully proved. Neither a mere preponderance of evidence, nor any weight of preponderant evidence, is sufficient for the purpose, unless it generate full belief of the fact, to the exclusion of all reasonable doubt. * * * It is elsewhere said, that the persuasion of guilt ought to amount to a moral certainty, or 'such a moral certainty as convinces the minds of the tribunal as reasonable men, beyond all reasonable doubt.' And this degree of conviction ought to be produced when the facts proved coincide with and are legally sufficient to establish the truth of the hypothesis assumed, namely, the guilt of the party accused, and are inconsistent with any other hypothesis. For it is not enough that the evidence goes to show his guilt; it must be inconsistent with the reasonable supposition of his innocence."

It would be simply a farce to hold that such evidence would authorize a conviction. Not only is there no express agreement proven as alleged, but no implied agreement; and without such express agreement the State's case fails, and it would equally have failed had an implied agreement been alleged, or relied on. Even in civil actions this court has constantly acted on the principle of giving the defendants the benefit of a construction favorable to the honesty of the transactions, when that construction would as well consist with the circumstances as a contrary one, and that where doubts are entertained as to the true construction to be given to the conduct of the parties those doubts should be resolved in favor of the defendants." Dallam vs. Richardson, 26 Mo. 324. This rule has frequently been followed in this court. Bank vs. Worthington, 145 Mo. loc. cit. 109 and cas. cit.; Greener vs. Schulz, 154 Mo. loc. cit. 434.

If such favorable presumptions are indulged in favor of honesty where the charge is merely fraud, then a fortiori should a like but more favorable view be taken where felony is the charge, and the accused is clothed with the presumption of innocence unless destroyed and swept away by countervailing evidence which establishes his guilt beyond a reasonable doubt. To the like effect see State vs. Gritzner, 124 Mo. loc. cit. 525.

For these reasons defendant's demurrer to the evidence and as embodied in an instruction to that effect, should have prevailed. State vs. Nesenhaver, 164 Mo. 461; State vs. Hagan, 154 Mo. 654; State vs. Baker, 144 Mo. 329; State vs. Shackelford, 148 Mo. 493; State vs. Gritzner, 124 Mo. 512, etc.

6. Nor is the conclusion just announced in any manner affected by the so-called testimony as to conferences, interviews and conversations between Stock, the "legislative agent," and Kratz, or between either of the others and Turner with reference to the purchase of defendant's shares of stock, defendant not being present or represented at such conferences, etc.; and the like line of remark applies to a conversation between Hespes and Stock. Such conversations were hearsay pure and simple. State vs. Patrick, 107 Mo. loc. cit. 152; State vs. Rotnschild, 68 Mo. 52; State vs. Jaeger, 66 Mo. 173; State vs. Huff, 161 Mo. loc. cit. 488; State vs. Hathhorn, 166 Mo. 228; State vs. Foley, 151 Mo. 440; State vs. Levy, 68 S. W. 562. All these conversations, absent defendant, were indubitably res inter alios.

NO EVIDENCE TO SHOW CONSPIRACY WITH CHARLES KRATZ.

7. Nor was the cause of the State at all strengthened by assuming and advancing the position that defendant was the co-conspirator of Stock and Kratz. There was no evidence to show such conspiracy, or authority on the part of either Kratz or Stock to speak for or act for defendant in the premises. Consequently the State vs. Huff, 161 Mo. loc. cit. 488, and other similar authorities, heretofore cited, apply and condemn the admission in evidence against defendant of such conversations. Besides, the idea that defendant conspired with Kratz and Stock to have himself bribed is as flagrantly absurd as would be the position that a woman had conspired with others for her seduction.

8. Whether the shares of stock sold by defendant to Stock were valuable or worthless was a question, under proper allegations made in the indictment, entirely legitimate for discussion before the jury upon proper evidence offered. Because if it were shown that defendant, knowing the stock to be worthless, sold it to Stock merely to disguise the real nature of the transaction, to wit, the acceptance of a bribe, this would be entirely competent evidence. 2 Gil. Evid. (14th Ed.) section 73. But the trial court, while it permitted Stock, after he had testified concerning the value of the shares, "No, I do not know anything about it," yet permitted him, in the face of such testimony, and over the objection of defendant in reply to the insistent questioning of the Circuit Attorney, to say, "I do not know; I considered them of no value." This witness was not testifying as an expert, and had twice avowed his ignorance of the value of the shares, and yet was permitted to testify as to what he ignorantly "considered" their value to be. He might as well have been asked if he knew the distance to the Dog Star Sirius, and, having twice replied in the negative, he might have been required to answer what he "considered" the distance to be. No possible or imaginable distinction can be taken between the hypothetical case and the one at bar. If Stock did not know, he did not know, and that was the ultima thule of all legitimate inquiry. But such testimony as to what Stock "considered," etc., was as worthless as the State in the indictment alleged the shares of stock to be. State vs. Gritzner, 124 Mo. loc. cit. 525, and cas. cit.

Notwithstanding the trial court admitted such evidence and other evidence to show the value or want of it of the stock when offered on behalf of the State, yet that court utterly refused to permit defendant to introduce evidence showing such stock had a value. For instance: Defendant offered to prove that minority stockholders of the Construction Company, of whom defendant was one, asserted that the stock had been rendered valueless by improper conduct of the directors, and hence shares did have at least a litigated value. This was excluded. Defendant offered to prove by Mr. F. N. Judson that defendant came to the witness on February 1, 1901, which was the day before the transaction between defendant and Stock, and consulted him and Judge Krum as attorneys, with reference to his claim against the directors, that at this consultation the shares of stock were referred to as the basis of the defendant's claim, and that the defendant was advised that he had a valid claim and could enforce it by

Continued on Page Eighteen.

FIVE DEFENDANTS ON BOODLE CHARGES IN THE CRIMINAL COURT.

EDMUND BERSCH. E. ED ALBRIGHT. CHAS. A. GUTKE. JOHN A. SHERIDAN. CHAS. J. DENNY.

BRIBERY DEFENSE STANDS ON ILLEGALITY OF SUBURBAN BILL.

Developments in Trial of the Cases Against Denny, Albright, Gutke, Sheridan and Bersch Indicate, as a Basis for Motion to Quash, an Effort Will Be Made to Show That Measure Was Illegally Drawn When Introduced in the Assembly—Contention Is That if the Members Could Not Act Legally on the Bill They Could Not Act Corruptly.

QUESTION OF SHERIDAN'S ELECTION IS ARGUED AT LENGTH.

JURY SELECTED TO TRY THE CASES.

Harry W. Baker, president Baker Produce Company, No. 4604 Washington boulevard.

Andrew B. Bartlett, broker, No. 5742 Vernon avenue.

Alexander M. Bogy, credit manager Ferguson-McKinney Dry Goods Company, No. 4308 Evans avenue.

James H. Brookmire, secretary Curtis Manufacturing Company, No. 4910 Washington avenue.

James P. Duncan, cashier Buxton & Skinner, No. 3120 Locust street.

William H. Danforth, president Robinson-Danforth Milling Company, No. 5625 Cates avenue.

Charles H. Hopkins, broker, No. 4003 McPherson avenue.

Harry C. Gilbert, commission merchant, No. 4444 Laclede avenue.

Samuel Gordon, Cox & Gordon, No. 4044 Westminster place.

William F. Griffith, department manager Hanley & Kinsella Coffee and Spice Company, No. 6204 Maple avenue.

James H. Haskins, Haskins-Ross Manufacturing Company, No. 3663 Delmar avenue.

Walter H. Petring, secretary H. Petring Grocer Company, No. 3946 Forest Park boulevard.

The selection of a jury in the cases of Charles J. Denny, T. Ed. Albright, Charles Gutke, John A. Sheridan and Edmond Bersch was completed at noon yesterday in Judge Ryan's court, and the joint trial of the quintet began after the noon recess. The charge in the indictments is accepting a bribe in the furtherance of the Suburban Railway franchise bill.

Yesterday's developments indicate that the defense may devote great effort to showing that the Suburban bill was illegally drawn when introduced in the Assembly, as a basis for a motion to quash, on the ground that as the members of the House could not legally act on the measure, they could not act corruptly on it within the meaning of the statute.

When court convened yesterday morning Circuit Attorney Folk completed his argument in response to the demurrer of defense, as published in yesterday's Republic. Judge Ryan overruled the demurrer and ordered the case to proceed.

The work of selecting a jury was begun and quickly completed, after which a recess for lunch was taken.

Elwin E. Goebel, Deputy Clerk in the Circuit Clerk's office, was the first witness examined. He produced the records of the office, showing that certificates of election of the defendants as members of the House of Delegates had been certified to by the Circuit Judges in April, 1898. On cross-examination, witness testified that no certificate had been issued to Sheridan of the Fourth Ward, but that one had been issued to William Vogel as the duly elected member from that ward.

P. R. Fitz Gibbon, City Register, was the next witness. He testified to having administered the official oath to the defendants as members of the House in April, 1899, and read the oaths of all the members from the official oath book of that year.

OBJECT TO READING SHERIDAN'S OATH.

Judge Krum objected to the reading of Sheridan's oath as irrelevant. He said the indictment averred that Sheridan, with the other defendants, had been duly elected, whereas the State's own evidence showed that he had not been elected, but had been defeated by William Vogel. The Circuit Judges had issued a certificate of election to Vogel and not Sheridan. Sheridan, therefore, could not have been a member of the House, and was therefore not amenable under the statute.

Circuit Attorney Folk contended that under the City Charter the House is the sole judge of the qualifications of its members. It had seated Sheridan, and he had acted thenceforward as a member of the body after taking the oath and was clearly amenable.

CONTENTION PRECIPITATED ANIMATED DISCUSSION.

This contention precipitated an animated discussion, in which Judge Ryan joined, touching the status of Sheridan in the House and in the eyes of the law. Mr. Folk argued that Sheridan was at least a de facto, if not a de jure, member, and thus a subject for bribery. Attorney Krum declared that a de facto officer could not be a subject for bribery. Judge Ryan was inclined to the Circuit Attorney's opinion, and asked for further information as to the manner in which Sheridan had been seated over Vogel by the House and the construction placed upon the case by the Court of Appeals. This was furnished by Judge Krum.

Judge Krum argued that the House had no process to seat a member without a certificate of election and that it was not the sole judge of the election of a member. As a matter of fact, he said, Sheridan was not elected, but was defeated by Vogel. Vogel presented his certificate of election to the House, took the oath, was seated and later ousted on the mere presentation of a petition by Sheridan, whom he designated a "mere interloper."

Circuit Attorney Folk quoted from the Charter provisions, showing that the House is the sole judge of the qualifications of its members and of their election also. He followed this with quotations from the Court of Appeals' decision in a similar case, which declared there could be no appeal from the House's ruling.

COURT WILL EXAMINE POINTS THOROUGHLY.

Judge Ryan announced that he would examine more thoroughly later into authorities on the two main points at issue, namely, Is a de facto officer a subject for bribery and was Sheridan a de facto member of the House? Meantime he would allow the examination to proceed.

After Witness FitzGibbon had read the official oaths of all the members of the House, including that of Vogel, he was excused.

George F. Mockler, secretary of the City Council, was the last witness of the day. He produced the journal of the Council for 1899-1900, from which he proceeded to read the record of the Suburban bill, known as Council bill No. 44.

Judge Krum objected to this testimony as incompetent on the ground that, as the original bill was not accompanied by a petition of the property owners on the streets named in the route, according to the provisions of the statutes, it was not a legal measure and could not legally be considered by the Assembly.

OBJECT TO TESTIMONY OF HOUSE RECORD.

This objection precipitated another long argument, bristling with hair-splitting technicalities. Judge Krum argued that, as the measure was not drawn in compliance with the ordinance provisions, it was not a lawful measure; therefore, there being before the Assembly nothing upon which it could lawfully act, that body could not have acted corruptly on it within the meaning of the statute defining bribery. He quoted numerous authorities in support of his contention.

Judge Ryan announced that he had already made a ruling adverse to this contention, and he saw no reason to change his ruling. The law as presented by Judge Krum, he said, was abhorrent in its application, if that phase proved to be correct, which he was not willing as yet to admit. In view of the many authorities presented in support of it, he would examine more deeply into the point raised, but at present he would overrule the objection and allow the examination to proceed.

After the witness had related the course of the measure through the Council until it was certified to the House he was excused and court ordered an adjournment until today. With the consent of counsel the jury was allowed to separate after being duly cautioned.

FIVE CHILDREN KILLED BY EXPLOSION OF GAS TANK.

Mother Hurled Through Side of House Into Road—Debris Takes Fire and Burns Bodies.

Fort Lee, N. J., Dec. 16.—By the explosion of a small gas tank to-day the residence of John Puglughi was demolished, his five children instantly killed, and his wife so severely injured that her recovery is despaired of.

The mother was found 200 feet from where the explosion took place, her right arm almost torn from her body.

Just returned from school, the children were at the lunch table when the explosion occurred. The roof and sides of the house were blown out. An adjoining cottage was also partially destroyed.

The debris immediately took fire and the bodies of the dead were badly charred.

Mrs. Puglughi, who was waiting on the children at the table, was blown through the side of the house, and was found in the road. The father was away from home.

The tank which exploded was in the cellar and supplied the illuminating gas for the building.

WEDDING PERFORMED BEFORE FOOTLIGHTS

Henry Cohen, Leading Man at the Germania Theater, Married to Miss Goldberg.

BRIDE MEMBER OF COMPANY.

Service Follows Ringing Down of Curtain on Evening Performance and Is Witnessed by a Large Audience.

After the curtain fell on "The Romance of the House of David" last night at the Fourteenth Street Theater, it rose again for a drama in real life, and Miss Minnie Goldberg, who was playing the role of the False Princess, and Henry Cohen, who played the part of Prince Nathan, were married before the audience, under the full glare of the footlights.

The marriage was the culmination of a romance in the lives of the actors almost as picturesque as the story they enacted on the stage. Several months ago Mr. Cohen was stricken with a fever while playing an engagement at the Fourteenth Street Theater. Miss Goldberg was playing a minor part in the same company. Cohen had shown her many courtesies and endeavored to educate her in the intricacies of the art.

When Miss Goldberg heard that he was sick she left the theater without taking time to change her costume and hastened to the home of the actor. All through his sickness Miss Goldberg carefully nursed him. In a few weeks Cohen began to improve, and he paid his suit in earnest to the actress-nurse who had saved his life. Very soon Cohen asked Miss Goldberg for her hand and the next evening announced their engagement to the other members of the company.

JEWISH RITES ARE OBSERVED.

The marriage ceremony was performed by the Rabbi Crosby, under the Jewish ritual.

With a canopy of pale blue silk over them the bride and groom advanced to the platform occupied by the rabbi, who uttered a few words in Hebrew, pronouncing them man and wife.

Mr. and Mrs. Joseph Jacobson, members of the company, attended the bridegroom, while Mr. and Mrs Jacob Gardner performed the pretty ceremony of giving away the bride after the Jewish fashion.

The bride's sister, Miss Sarah Goldberg, acted as bridesmaid and Sam Stern was Mr. Cohen's best man. Miss Sarah Fox was maid of honor.

While the ceremony was being performed Maurice Kroner, on behalf of the company, presented Mr. Cohen with a gold watch. A committee from the Sons and Daughters of Zion attended the theater, and from a box their spokesman extended the wishes of the society for the young couple's welfare.

After the ceremony was performed the entire company and friends of the couple retired to the cafe of the theater, where a banquet was given in honor of the couple by the management of the company.

Mr. Cohen is leading man of the European Opera and Dramatic Company, and is said by Jewish theatrical circles to be one of the leading Jewish actors in the United States. He is 30 years old and was born in Russia. He is said to be a member of a very wealthy Russian family and has two brothers in Chicago.

The bride, Miss Goldberg, has only been on the stage a little over two years. Last July she joined the company of which Cohen was leading man, and her progress was rapid under his direction.

ADVICE TO MARK TWAIN.

Wit Tells Him How to Exercise His Philanthropy After Death.

REPUBLIC SPECIAL.

New York, Dec. 16.—Since Mark Twain advertised for editorial obituaries of himself he has received dozens of voluntary ones sent to him for revision.

In this connection a Baltimore man has sent him the following advice:

"Mark Twain, New York.—Some people think you are immortal, but if you really ever do intend to die, it is certainly your duty to go to h——l. Funny men are needed there, but they are very small potatoes up in heaven. You have always preached philanthropy, and now you have the chance of your lifetime to demonstrate your consistency."

Mr. Clemens regards this idea as full of suggestions, and is considering how far a humorist's duty to his fellow-creatures actually extends.

One wag has suggested that Mr. Clemens might adopt the advice if he were given a monopoly of the ice-water privilege in exchange for his corner in wit on earth.

WOMAN STRUCK BY ENGINE.

Mrs. Katie Baker Injured While Crossing Wabash Tracks.

Mrs. Katie Baker, 35 years old, of No. 2812 North Spring avenue, was run down by a switch engine last night in the Wabash freight yards and so severely injured that she may die. Her right arm was severed and she sustained internal injuries.

She was struck shortly before 8 o'clock by engine No. 67 of the Terminal Railroad as it was passing the yards near Main and Ashley streets. Joseph Reynolds, who was in charge of the engine, did not see the woman until she was struck.

Mrs. Baker was hurried to the City Hospital. She has a son, but he could give no reason for his mother's presence in the railroad yards at that hour.